



## POLICE DEPARTMENT

January 29, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Juan Rivera  
Tax Registry 933260  
Legal Bureau  
Disciplinary Case No. 84471/08  
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The above-named member of the Department appeared before me on January 13, 2010, charged with the following:

1. Said Police Officer Juan Rivera, assigned to Legal Bureau, while off-duty, on or about August 3, 2008, [REDACTED] County, New York, did consume alcohol to the extent that said Officer was unfit for duty.

P.G. 203-04, Page 1, Paragraph 2 – FITNESS FOR DUTY

2. Said Police Officer Juan Rivera, assigned to Legal Bureau, while off-duty on or about August 3, 2008, [REDACTED] County, New York, did consume an intoxicant to the extent that said Officer was unfit for duty

P.G. 203-04, Page 1 Paragraph 2 – FITNESS FOR DUTY

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent having pleaded Guilty is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent is a six-and-a-half-year member of the Department currently assigned to the Legal Bureau. He testified that he commenced his work as a police officer while assigned to the 77 Precinct Station House for three years. In November 2005, while working a foot post, he was struck in the street by a vehicle. He sustained tears to his meniscus in his left knee. He also sustained two herniated discs in his back which led to sciatica and a pinched nerve. The Respondent said that he was out on sick leave for approximately five to six months. He was returned to duty and placed on limited duty for 30 days. He then was placed on restricted duty where he has remained ever since the injury. He has been assigned to the Legal Bureau since approximately August 2006.

The Respondent explained that he is limited in his ability to walk, run, lift items and to take the stairs. He had arthroscopic surgery for the injury to his knee. As for his back, within two months of the injury, he was prescribed [REDACTED] for the pain and [REDACTED] for his nerves. The Respondent stated that he had a lot of pain and had to take the narcotic medications to function. He took the narcotic prescriptions from January 2006 until the incident in August 2008.

On August 3, 2008, the Respondent had planned to attend an all day hip-hop concert at Jones Beach. He testified that he took his two medications that morning

because he anticipated standing up at the concert for most of the day. The Respondent said that he made a bad decision when he decided to consume straight whiskey, Jack Daniels from the trunk of his car before entering the concert arena where alcohol was not permitted. The Respondent stated that one of his friends had driven his car to the venue. He was with other friends also at the time he consumed the alcohol. The arena was going to open between 1 p.m. and 2 p.m. The Respondent remembered walking down from his seat to smoke a cigarette before the concert started and the next thing he recalled was waking up in the hospital.

The Respondent had lost consciousness and had to be transported by ambulance to the hospital. He woke up some time after being admitted to the hospital. The Respondent said he was treated for intoxication due to the consumption of the drugs and alcohol. He testified that he was suspended from duty for 30 days for being unfit for duty. The Respondent acknowledged that he had consumed prescribed narcotics as well as alcohol on August 3, 2008.

The Respondent testified that the Department referred him to an [REDACTED] [REDACTED] program. He complied with the referral and attended the [REDACTED] in Pennsylvania for 29 days. He participated in group and individual meetings, Narcotics Anonymous, and Alcoholics Anonymous meetings. He learned that his body became dependent on the drugs and that mixing the drugs with alcohol was a dangerous combination. He was not able to take any drugs while at the program. He explained that the first week and a half he had excruciating pain, but he learned other ways to deal with the pain.

The Respondent said that he completed the program and then had to attend [REDACTED] sessions three times a week for six months. He attended weekly [REDACTED] sessions, monthly [REDACTED] sessions, and met weekly with a Department [REDACTED] counselor. The Respondent completed both the [REDACTED] prescribed by the Department. He testified that he stopped taking the prescription drugs and stopped consuming alcohol since his [REDACTED]; and he learned how to cope with his condition through physical therapy and psychotherapy instead.

The Respondent explained that he had been on sick leave and was never visited by the Department. He had never violated the Department's sick leave policy and had never been found unfit for duty prior to this incident or after. He stated that both his private doctors and Department doctors were aware of the drugs that he was taking and at no time did they suggest in the two-and-a-half years that he consumed the medication that his dosage be reduced or stopped. The Respondent said that currently he is on Modified Assignment while on restricted duty.

During cross-examination, the Respondent acknowledged that he took the prescribed medication in the morning of August 3, 2008 knowing that he did not eat. He stated that he normally does not eat breakfast and thought he would eat lunch at the venue since they arrived about lunch time. He admitted to knowing that his blood alcohol content was .26. He estimated that he arrived at the location about noon and the concert was scheduled to start around 1 p.m.-2 p.m. He admitted that it was an all day hip-hop event. He testified that this was the first time he attended such an event and the first time

he attended a concert at that venue. He stated that he never consumed alcohol between January 2006 and the August 2008 incident date. He just made a foolish mistake with friends on that date.

Upon questioning by the Court, the Respondent testified that he applied for ordinary disability retirement with the Department, but was disapproved about the time this incident occurred. He stated that he recently applied for a disability retirement and is awaiting the result.<sup>1</sup>

### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on July 1, 2003. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has pleaded Guilty to consuming alcohol and consuming an intoxicant to the extent that he was unfit for duty. The Respondent admitted that he took two, prescribed narcotic drugs, [REDACTED] and [REDACTED] as well as drank Jack Daniels whiskey which rendered him unconscious resulting in his transport to the hospital. The Respondent also admitted that he had a blood alcohol content of .26, three times the legal limit.

Although the Respondent has completed [REDACTED], [REDACTED]

[REDACTED] and testified that he no longer consumes the medication or alcohol, the effects

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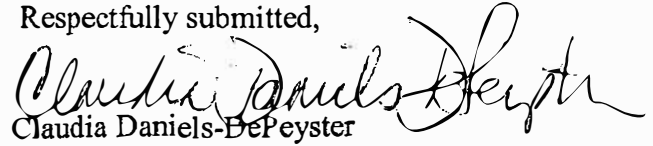
<sup>1</sup> The Assistant Department Advocate noted that the Respondent was approved for a psychological disability retirement by the Department, but the hearing on the matter was not properly recorded and had to be rescheduled. The Respondent testified that he had the second hearing. As per the Assistant Department Advocate, the anticipated date of approval of the Respondent's paperwork is March 2010.

of what transpired on August 3, 2008 are still of concern to the Department. The Respondent consumed two narcotic drugs as well as alcohol on an empty stomach. He consumed alcohol well aware that his medication did not recommend such consumption. In addition, the Respondent consumed so much alcohol that his blood alcohol reading was a .26; three times the legal limit in New York State. The result caused the Respondent to lose consciousness while at a concert requiring immediate medical attention. Based on the Respondent's conduct as well as his alcohol reading, the Department has an interest in monitoring his progress for a year to insure that there is no relapse. The Respondent testified that he still suffers with pain but has found other ways to address it aside from taking medication. The Assistant Department Advocate requested that the Respondent receive 30 days time already served on suspension, plus ordered breath testing and one-year dismissal probation. I agree. Placing a member on dismissal probation is reserved for the more serious offenses where a period of monitoring is required and where the member can be terminated for any future misconduct committed during the one year probationary period.

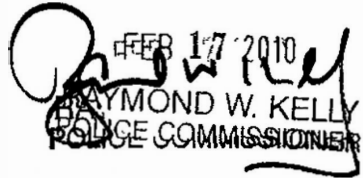
Accordingly, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at

anytime without further proceedings. I further recommend that the Respondent receive 30 days time already served on suspension.

Respectfully submitted,




Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials

**APPROVED**  
FEB 17 2010  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK


From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JUAN RIVERA  
TAX REGISTRY NO. 933260  
DISCIPLINARY CASE NO. 84471/08

In 2005, the Respondent received an overall rating of 3.0 “Competent” on his annual performance evaluation. In 2006 and 2007, he received a rating of 4.5 “Above Highly Competent.” The Respondent has not received any Medals in his career to date.



The Respondent has no prior formal disciplinary record.

For your consideration.

  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials